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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

**PETITION TO AMEND
RULE 123, RULES OF THE
SUPREME COURT OF
ARIZONA**

Supreme Court No. R-18-_____

**MOTION TO AMEND AND
RESTATE PETITION;
MOTION TO EXPEDITE
CONSIDERATION**

Advay Mengle (“Petitioner”) respectfully moves to amend and restate his petition of May 9, 2018 (“Original Petition”) to this Court to adopt amendments to Rule 123 (the “Rule”) of the Rules of the Supreme Court of Arizona (“Rules”) to increase public access to non-confidential court records in a convenient and cost-effective manner (and also moves for any necessary leave from this Court to do so). In the alternative, if amendment is not permitted, Petitioner moves to withdraw the Original Petition and instead petition this Court anew pursuant to Rule 28(a) via the attached First Amended and Restated Petition.

While Rule 28 of the Rules does not appear to directly address amending Rule 28 petitions, permitting (under this Court's broad authority to make rules as provided for by Article 6 Section 5 of the Arizona Constitution) Petitioner to amend and restate his petition would: (i) encourage judicial economy by avoiding opening two related petitions for public comment, reviewing two petitions, and, if accepted, ordering two related amendments to the Rule; and (ii) help commenters and this Court analyze the impact of the proposals in their full context. The additionally proposed amendments to the Rule included in the First Amended and Restated Petition would permit and encourage courts and clerks of court to display online any case records to which the Rule (as amended) would require remote electronic access. Although this proposal could be submitted as an independent petition, it is closely related to the amendments proposed in the Original Petition.

Pursuant to Rule 28(g), Petitioner also moves to expedite consideration of the First Amended and Restated Petition with the following proposed schedule:

| | |
|--|---------------------|
| 28(c) Initial review and opening of comments | As soon as possible |
| 28(d)(1) Comments closed | August 1, 2018 |
| 28(d)(2) Petitioner reply, if any, due | August 9, 2018 |
| 28(f)(1) Consideration during rules conference | September 2018 |
| 28(f)(2) Effective date of any amendments | January 1, 2019 |

Such expedited consideration would allow the public to reap the potential benefits of improved remote electronic access to public records approximately one year

faster than the normal Rule 28 schedule, since the petition was filed after January 10, 2018.

RESPECTFULLY SUBMITTED this 10th day of May, 2018.

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**PETITION TO AMEND
RULE 123, RULES OF THE
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Supreme Court No. R-18-_____

**FIRST AMENDED AND
RESTATED PETITION**

Pursuant to Rule 28, Rules of the Supreme Court of Arizona (“Rules”), Advay Mengle (“Petitioner”) respectfully petitions this Court to adopt amendments to Rule 123 of the Rules to increase public access to non-confidential court records in a convenient and cost-effective manner. Petitioner is a layperson (not an attorney) who has in the past requested access to various historic cases of public interest.

I. Background and Purpose of the Proposed Rule Amendments

This amendment would require that custodians provide remote electronic access to records (that are otherwise open to the public under applicable rules and law) to the general public, instead of such access being left to the discretion of the custodian. The intent is not to change the scope of which records are open to the public - only to require they be provided via the medium most convenient to the public, the Internet.

Court clerks (or other custodians) currently offer electronic access to certain case records to the public, but do so in an inconsistent manner, in varying forms and media. For example, as Petitioner has done various times, a member of the public (who is neither a party nor an attorney) may e-mail the clerk for PDF copies of a case record and the clerk may simply respond with copies of the requested documents attached to the e-mail.

When the documents requested are sufficiently voluminous, however, certain custodians sometimes offer only copies on CD-ROM (sent back and forth via physical mail), while in other instances arrangements are made to deliver the

copies via a generally-available online file-sharing service¹. This amendment would eliminate that inconsistency between courts and require that custodians provide access to records (that are otherwise open to the public) in remote electronic form (i.e. over the Internet). Furthermore, the amendment would extend the applicability of the procedures regarding delay or denial and review thereof (in paragraph (f) of Rule 123 of the Rules) from records in paper medium to remote electronic access as well. Petitioner also proposes to amend the rules such that future enhancements to computer systems responsible for public records are designed with a goal of remote electronic access and use of non-proprietary standards.

Public access to and understanding of the disciplinary system for attorneys and judges should be made equally easy as normal case files, and therefore the amendment explicitly mentions that remote electronic access covers all information “open to the public” under Rule 70 of the Rules (including but not limited to the state bar file and the record maintained by the disciplinary clerk) and “available to the public” under Rule 9 of the Rules of the Commission on Judicial Conduct.

¹ Commonly used services include Google Drive (<https://drive.google.com/>), Microsoft OneDrive (<https://onedrive.live.com/>), and Dropbox (<https://www.dropbox.com/>).

Benefits of mandating that access to public court records is provided via remote electronic access and using open standards include:

- greater convenience for the public over visiting a court (for example, for members of the public for whom visiting a court is physically difficult or prohibitively expensive),
- ensuring a particular software vendor cannot be a gatekeeper of public records access,
- saving postage costs and cost of physical CD-ROMs, and
- reducing environmental waste.

Finally, the proposed amendments explicitly permit courts and court clerks to display online any case records to which public remote electronic access is permitted. While there are many forms of remote electronic access to records (such as email and private mass file-sharing discussed above), publishing records online:

- further reduces the barrier to access for members of the public since no requests have to be made to court officials, which could be intimidating for unsophisticated requesters or those without representation,

- reduces the turnaround time for record access (as it would be essentially instantaneous for anyone with Internet access), and
- may reduce costs and court staff time by reducing one-on-one and repeated contact with requesters.

As this Court stated in its 1997 comments² on Rule 123: “Public access to the records of court proceedings is an essential element of a democratic system. Court personnel have a duty to assist the public in obtaining information on their judicial system. That duty is no less a part of court operations than are the other primary duties of the judiciary.” Requiring that custodians provide remote electronic access to such records (and encouraging online access specifically) is one way in which the judiciary can make the public’s right to access public data a practical reality.

II. Contents of the Proposed Rule Amendment

Petitioner requests that this Court amend Rule 123 of the Rules as specified³ in Attachment A (which is incorporated by reference herein), including amending

² Retrieved May 9, 2018 from <https://govt.westlaw.com/azrules/Document/NFC83A66025C811E3A3DDB79419D1C223>

³ Comparisons shown with respect to Rule 123 as published at <https://govt.westlaw.com/azrules/Document/NFC83A66025C811E3A3DDB79419D1C223> with amendments through November 1, 2017 and retrieved May 9, 2018.

¶(f)(5)(A), amending ¶(g) throughout, adopting new ¶(g)(1)(E)(v-vi), adopting new ¶(g)(10), adopting new ¶(h)(2)(C), and amending ¶(h)(4)(C).

RESPECTFULLY SUBMITTED this 10th day of May, 2018.

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Attachment A - Proposed Rule 123, with unaltered portions omitted

Rule 123. Access to the Judicial Records of the State of Arizona

...

(f) Access to Records in Paper Medium.

...

(5) Review of Denials to Access Records.

(A) Any applicant who is denied access (including, but not limited to, remote electronic access) to or copies of any record, bulk data, or compiled data pursuant to this rule, shall be entitled to an administrative review of that decision by the presiding judge. ...

...

(g) Remote Electronic Access to Case Records.

(1) A court shall ~~may~~ provide remote electronic access to case records as follows:

(A) Parties, Attorneys, and Arbitrators. Parties, attorneys, and arbitrators shall ~~may~~ be provided remote electronic access, upon registering, to case records that are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. ...

(B) Members of the State Bar of Arizona. In addition to access provided by paragraph (g)(1)(A), attorneys who are active members of the State Bar of Arizona shall ~~may~~ be provided remote electronic access to all case records that are not sealed or confidential by law, as authorized by the Arizona Code of Judicial Administration (ACJA).

(C) Governmental Entities and Private Organizations Serving a Public Purpose. Any federal, state, tribal or local governmental entity or private organization serving a public purpose shall ~~may~~ be provided remote electronic access to any case records necessary to carry out a particular governmental or public purpose responsibility. ...

(D) General Public, Registered Users.

(i) Members of the public shall ~~may~~ be provided remote electronic access pursuant to ACJA § 1-604 to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:

...

(E) General Public, Non-Registered Users. Unless otherwise provided by rule or law, members of the public shall ~~may~~ be provided remote electronic access, without registering, to:

...

(iii) Case information shall ~~may~~ be provided for family law matters, with minute entries limited only to those issued during hearings conducted in open court or in chambers when one or more parties or their counsel are present. ...

...

(v) all information available to the public under Rule 9, Rules of the Commission on Judicial Conduct.

(vi) all information open to the public pursuant to Rule 70.

...

(3) Courts and clerks of court shall not display case records online except:

A. minute entries, as provided by ARS §§ 12-283(I);

B. case records, as ordered by the court in a particular high profile case that creates great public or media interest to which the court can more timely and efficiently respond by displaying records of the case online;

C. audio or video of any case, as authorized by the presiding judge of the court, the chief judge of the court of appeals, or the chief justice of the supreme court; ~~or~~

D. records to which a court must provide remote electronic access to members of the public pursuant to paragraph (g)(1)(D) or (g)(1)(E) above; or

~~D~~E. as otherwise provided in this rule.

When permitted and practical, courts and clerks of court are encouraged to display case records online, in an open and non-proprietary format, to

maximize access by the general public. Any remote electronic access shall be conditioned upon the user's agreement to access the information only as instructed by the court, not to attempt any unauthorized access, and to consent to monitoring by the court of all use of the system. The court will also notify users that it will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the data. Such agreement and notices shall be provided to the users in any manner the court deems appropriate. The court may deny access to users for failure to comply with such requirements. The court or clerk of court that establishes remote electronic access to case records may also establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.

...

(10) Delay or Denial; Explanation; Review of Denials.

(A) The custodian is required to comply with any request for remote electronic access to case records that meets the requirements of this paragraph (g), except for as provided in paragraph (f)(4)(A) above.

(B) If a request cannot be granted within a reasonable time or at all, the custodian shall inform the applicant as provided for in paragraph (f)(4)(B)(i) above, and, if unsuccessful, the custodian shall follow the procedures specified in paragraph (f)(4)(B)(ii) above.

(C) Any applicant who is denied remote electronic access to case records shall be entitled to administrative review as provided for in paragraph (f)(5)(A) above, and any party aggrieved by the decision of the presiding judge or designee in such administrative review may seek review as provided for in paragraph (f)(5)(B) above.

(h) Access to Audiotape, Videotape, Microfilm, Computer or Electronic Based Records.

...

(2) Authority; Procedures.

...

(C) The custodian shall provide remote electronic access to computer or electronic based records open to the public if such access is requested and not otherwise prohibited by applicable rule or law.

(4) Databases, Operating Systems and Network Programs.

...

(C) Consistent with the court's obligation to provide public access to its records, and subject to resource limitations, the design and operation of all future automated record management systems shall incorporate processing features and procedures that maximize the availability of court records (including, but not limited to, remote electronic access) maintained in electronic medium. Automated systems development policy shall require the identification and segregation of confidential data elements from data base sections that are accessible to the public. Whenever feasible, any major enhancement or upgrade to existing systems shall include modifications that segregate confidential information from publicly accessed data bases and store information in a manner amenable to remote electronic access and using non-proprietary and open standards.

...